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October 24, 2005

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The Honorable Rya W. Zobel  
 United States District Judge  
 United States District Court, District of  
 Massachusetts  
 John Joseph Moakley Courthouse  
 1 Courthouse Way  
 Boston, MA 02210

**Re: Miller, et al. v. Treado, et al.**  
**Case No. 05-10367**

Dear Judge Zobel:

This firm represents the defendants in the above-referenced matter. We write in response to the letter from the plaintiffs' counsel to your Honor dated October 21, 2005 (Docket No. 26). In that letter, the plaintiffs request that the Court hear oral argument on the plaintiffs' Motion for Order to Enjoin Reissue Proceedings (Docket No. 11) at the Scheduling Conference set for tomorrow, October 25.

The plaintiffs have not articulated any reason why they now wish to have oral argument, four months after they filed the motion and three months after the Court indicated that it would decide the motion on the papers. The defendants did request oral argument on the motion to enjoin prior to the Initial Scheduling Conference held on July 27, 2005. However, at that Conference, the Court gave the defendants leave to file a sur-reply brief, and indicated that it would then decide the motion without further oral argument. (See Clerk's Notes from the July 27 Initial Scheduling Conference: "Sur-reply to be filed 8/8/05; Judge then to decide motion").

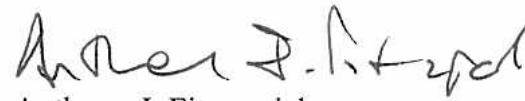
The plaintiffs' motion to enjoin has been fully briefed, with opening and reply briefs from the plaintiffs, and opposing and sur-reply briefs from the defendants. That briefing was completed more than two months ago. Most tellingly, in their October 21 letter to your Honor, the plaintiffs do not point to a single new development or changed circumstance to justify their request for oral argument. On the contrary, the plaintiffs' letter indicates that circumstances have not changed since the parties completed their briefing on the motion. All this being so, the

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defendants respectfully submit that there is no reason for the Court to reconsider its prior determination that it would decide the motion on the papers.

Respectfully yours,

  
Anthony J. Fitzpatrick

AJF/lnw

cc: Martin B. Pavane, Esq.  
Teodor J. Holmberg, Esq.  
Paul D. Weller, Esquire